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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/12-168

13 **P & S 76**
1912 Nevada City Highway
Nevada City, CA 95945
14 **Mailing Address:**
3634 Farm Hill Boulevard
15 Redwood City, CA 94061
16 **PIOTR JOSEF BARAN, OWNER**
Automotive Repair Dealer Registration No.
ARD 242996
17 Smog Check Station License No. RC 242996,

A C C U S A T I O N
S M O G C H E C K

18 and

19 **ROBERT PAUL EACOBACCI**
515 Nimrod Street, Apt. D
20 Nevada City, CA 95959
Basic Emission Specialist Technician
21 License No. EB 001259

22 Respondents.

24 Complainant alleges:

25 **PARTIES**

26 1. John Wallauch ("Complainant") brings this Accusation solely in his official capacity
27 as the Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

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1 **Automotive Repair Dealer Registration**

2 2. On a date uncertain in 2005, the Bureau issued Automotive Repair Dealer
3 Registration Number ARD 242996 ("registration") to Piotr Josef Baran ("Respondent P & S"),
4 doing business as P & S 76. The registration will expire on December 31, 2012, unless renewed.

5 **Smog Check Station License**

6 3. On or about March 3, 2006, the Bureau issued Smog Check Station License Number
7 RC 242996 ("station license") to Respondent P & S. The station license will expire on December
8 31, 2012, unless renewed.

9 **Basic Emission Specialist Technician License**

10 4. On a date uncertain in 1998, the Bureau issued Basic Emission Specialist Technician
11 License Number EB 001259 ("technician license") to Robert Paul Eacobacci ("Respondent
12 Eacobacci"). The technician license was in full force and effect at all times relevant to the
13 charges brought herein and will expire on December 31, 2012, unless renewed.

14 **STATUTORY PROVISIONS**

15 5. Section 9884.7 of the Business and Professions Code ("Code") states, in pertinent
16 part:

17 (a) The director, where the automotive repair dealer cannot show there
18 was a bona fide error, may refuse to validate, or may invalidate temporarily or
19 permanently, the registration of an automotive repair dealer for any of the following
20 acts or omissions related to the conduct of the business of the automotive repair
21 dealer, which are done by the automotive repair dealer or any automotive technician,
22 employee, partner, officer, or member of the automotive repair dealer.

23 (1) Making or authorizing in any manner or by any means whatever any
24 statement written or oral which is untrue or misleading, and which is known, or which
25 by the exercise of reasonable care should be known, to be untrue or misleading.

26 (4) Any other conduct which constitutes fraud.

27 (b) Except as provided for in subdivision (c), if an automotive repair
28 dealer operates more than one place of business in this state, the director pursuant to
29 subdivision (a) shall only invalidate temporarily or permanently the registration of the
30 specific place of business which has violated any of the provisions of this chapter.
31 This violation, or action by the director, shall not affect in any manner the right of the
32 automotive repair dealer to operate his or her other places of business.

33 (c) Notwithstanding subdivision (b), the director may invalidate
34 temporarily or permanently, the registration for all places of business operated in this
35 state by an automotive repair dealer upon a finding that the automotive repair dealer

1 has, or is, engaged in a course of repeated and willful violations of this chapter, or
2 regulations adopted pursuant to it.

3 6. Code section 9884.13 provides, in pertinent part, that the expiration of a valid
4 registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary
5 proceeding against an automotive repair dealer or to render a decision invalidating a registration
6 temporarily or permanently.

7 7. Code section 477 provides, in pertinent part, that "Board" includes "bureau,"
8 "commission," "committee," "department," "division," "examining committee," "program," and
9 "agency." "License" includes certificate, registration or other means to engage in a business or
10 profession regulated by the Code.

11 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the
12 Director has all the powers and authority granted under the Automotive Repair Act for enforcing
13 the Motor Vehicle Inspection Program.

14 9. Section 44072.2 of the Health and Safety Code states, in pertinent part:

15 The director may suspend, revoke, or take other disciplinary action
16 against a license as provided in this article if the licensee, or any partner, officer, or
17 director thereof, does any of the following:

18 (a) Violates any section of this chapter [the Motor Vehicle Inspection
19 Program (Health and Saf. Code, § 44000, et seq.)] and the regulations adopted
20 pursuant to it, which related to the licensed activities.

21 (c) Violates any of the regulations adopted by the director pursuant to
22 this chapter.

23 (d) Commits any act involving dishonesty, fraud, or deceit whereby
24 another is injured.

25 10. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the
26 expiration or suspension of a license by operation of law, or by order or decision of the Director
27 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive
28 the Director of jurisdiction to proceed with disciplinary action.

11. Section 44072.8 of the Health and Safety Code states:

When a license has been revoked or suspended following a hearing under
this article, any additional license issued under this chapter in the name of the
licensee may be likewise revoked or suspended by the director.

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1 **COST RECOVERY**

2 12. Code section 125.3 provides, in pertinent part, that a Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FACTUAL BACKGROUND**

7 13. In or about March, 2011, the Bureau was contacted by an unidentified person, who
8 alleged that Respondent Eacobacci, who was employed by Respondent P & S, had performed an
9 illegal smog inspection. The informant indicated that a 1999 Land Rover Discovery ("Vehicle
10 1"), owned by Respondent P & S had failed a prior smog inspection due to the Malfunction
11 Indicator Light ("MIL") being illuminated and that Respondent Eacobacci was unable to repair
12 the vehicle to turn off the MIL.

13 14. On or about June 1, 2011, the Bureau conducted a detailed review of the Vehicle
14 Information Database ("VID"), which showed that Vehicle 1 had failed the earlier smog
15 inspection performed on May 24, 2010. The VID also showed that on August 20, 2010, Vehicle
16 1 passed, with all monitors completed, no history fault codes, and emission repairs performed. A
17 further review of the VID revealed that another 1999 Land Rover Discovery ("Vehicle 2") had
18 also been tested and passed on August 20, 2010, within minutes after the passing test on Vehicle
19 1. Respondent Eacobacci issued Certificate of Compliance Number NW349717C for Vehicle 1.
20 In fact, Vehicle 1 was not tested during the OBD II functional test¹ and Vehicle 2 was used,
21 constituting clean plugging.

22 ¹ The On Board Diagnostics (OBD II) functional test is an automated function of the BAR-97
23 analyzer. During the OBD II functional test, the technician is required to connect an interface cable from
24 the BAR-97 analyzer to a Diagnostic Link Connector (DLC) which is located inside the vehicle. Through
25 the DLC, the BAR-97 analyzer automatically retrieves information from the vehicle's on-board computer
about the status of the readiness indicators, trouble codes, and the MIL (malfunction indicator light). If the
vehicle fails the OBD II functional test, it will fail the overall inspection.

26 Clean plugging is the use of the OBD II readiness monitor status and stored fault code (trouble
27 code) status of a passing vehicle for the purpose of illegally issuing a smog certificate to another vehicle
28 that is not in compliance due to a failure to complete the minimum number of self tests, known as
monitors, or due to the presence of a stored fault code that indicates an emission control system or
component failure.

15. On July 20, 2011, the Bureau visited Respondent P & S's facility and spoke with Respondent Eacobacci regarding these vehicles. Respondent Eacobacci admitted to the Bureau that he had used Vehicle 2, which belonged to a customer, to pass the OBD-II functional test for Vehicle 1.

FIRST CAUSE FOR DISCIPLINE

(Misleading Statements)

16. Respondent P & S has subjected his registration to discipline under Code section 9884.7, subdivision (a)(1), in that on or about August 20, 2010, he made statements which he knew or which by exercise of reasonable care he should have known were untrue or misleading as follows: Respondent P & S certified that vehicle 1 had passed inspection and was in compliance with applicable laws and regulations. In fact, Respondent P & S conducted the inspection on Vehicle 1 using clean plugging methods by substituting or using Vehicle 2 during the OBD II functional tests in order to issue the smog certificate of compliance for Vehicle 1, and did not test or inspect that vehicle as required by Health and Safety Code section 44012.

SECOND CAUSE FOR DISCIPLINE

(Fraud)

17. Respondent P & S has subjected his registration to discipline under Code section 9884.7, subdivision (a)(4), in that on or about August 20, 2010, he committed acts which constitute fraud by issuing electronic Certificate of Compliance Number NW349717C for Vehicle 1 without performing a bona fide inspection of the emission control devices and systems on that vehicle, thereby depriving the People of the State of California of the protection afforded by the Motor Vehicle Inspection Program.

THIRD CAUSE FOR DISCIPLINE

(Violation of the Motor Vehicle Inspection Program)

18. Respondent P & S has subjected his station license to discipline under Health and Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding Vehicle 1, he violated sections of that Code, as follows:

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1 a. **Section 44012:** Respondent P & S failed to ensure that the emission control tests
2 were performed on that vehicle, in accordance with procedures prescribed by the department.

3 b. **Section 44015:** Respondent P & S issued electronic Certificate of Compliance
4 Number NW349717C for that vehicle, without ensuring that the vehicle was properly tested and
5 inspected to determine if it was in compliance with Health and Safety Code section 44012.

6 **FOURTH CAUSE FOR DISCIPLINE**

7 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

8 19. Respondent P & S has subjected his station license to discipline under Health and
9 Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
10 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

11 a. **Section 3340.35, subdivision (c):** Respondent P & S issued the electronic certificate
12 of compliance even though that vehicle had not been inspected in accordance with section
13 3340.42 of that Code.

14 c. **Section 3340.42:** Respondent P & S failed to conduct the required smog tests and
15 inspections on that vehicle in accordance with the Bureau's specifications.

16 **FIFTH CAUSE FOR DISCIPLINE**

17 **(Dishonesty, Fraud or Deceit)**

18 20. Respondent P & S has subjected his station license to discipline under Health and
19 Safety Code section 44072.2, subdivision (d), in that on or about August 20, 2010, regarding
20 Vehicle 1, he committed acts involving dishonesty, fraud or deceit whereby another was injured
21 by issuing electronic Certificate of Compliance Number NW349717C for that vehicle without
22 performing a bona fide inspection of the emission control devices and systems on that vehicle,
23 thereby depriving the People of the State of California of the protection afforded by the Motor
24 Vehicle Inspection Program.

25 **SIXTH CAUSE FOR DISCIPLINE**

26 **(Violations of the Motor Vehicle Inspection Program)**

27 21. Respondent Eacobacci has subjected his technician license to discipline under Health
28 and Safety Code section 44072.2, subdivision (a), in that on or about August 20, 2010, regarding

1 Vehicle 1, above, he failed to comply with section 44012 of that Code in a material respect, as
2 follows: Respondent Eacobacci failed to perform the emission control tests on Vehicle 1 in
3 accordance with procedures prescribed by the department.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Violations of Regulations Pursuant to the Motor Vehicle Inspection Program)**

6 22. Respondent Eacobacci has subjected his technician license to discipline under Health
7 and Safety Code section 44072.2, subdivision (c), in that on or about August 20, 2010, regarding
8 Vehicle 1, he violated sections of the California Code of Regulations, title 16, as follows:

9 a. **Section 3340.30, subdivision (a):** Respondent Eacobacci failed to inspect and test
10 that vehicle in accordance with Health and Safety Code section 44012.

11 b. **Section 3340.42:** Respondent Eacobacci failed to conduct the required smog tests
12 and inspections on that vehicle in accordance with the Bureau's specifications.

13 **EIGHTH CAUSE FOR DISCIPLINE**

14 **(Dishonesty, Fraud or Deceit)**

15 23. Respondent Eacobacci has subjected his technician license to discipline under Health
16 and Safety Code section 44072.2, subdivision (d), in that on or about August 20, 2010, Vehicle 1,
17 above, he committed acts involving dishonesty, fraud or deceit whereby another was injured by
18 issuing electronic Certificate of Compliance Number NW349717C without performing a bona
19 fide inspection of the emission control devices and systems on that vehicle, thereby depriving the
20 People of the State of California of the protection afforded by the Motor Vehicle Inspection
21 Program.

22 **PRIOR CITATIONS**

23 24. To determine the degree of penalty, if any, to be imposed upon Respondents P & S
24 and Eacobacci, Complainant alleges, as follows:

25 a. On August 22, 2007, the Bureau issued Citation No. C08-0151 to Respondent P & S
26 against his registration and station licenses for violations of Health and Safety Code section
27 44012, subdivision (f) (failure to perform a visual/functional check of emission control devices)
28 and California Code of Regulations, title 16, ("Regulation"), section 3340.35, subdivision (c)

1 (issuing a certificate of compliance to a vehicle improperly tested). Respondent P & S issued a
2 certificate of compliance to a Bureau vehicle with a missing pulse air injection system. The
3 Bureau assessed a civil penalty of \$500. Respondent P & S complied with this citation on
4 September 24, 2007.

5 b. On September 27, 1999, the Bureau issued Citation No. M2000-0166 to Respondent
6 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
7 (qualified technicians shall perform tests of emission control systems and devices in accordance
8 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
9 section 3340.41, subdivision (c) (no person shall enter into the test analyzer system any vehicle
10 identification information or emission control system identification data for any vehicle other
11 than the one being tested. Nor shall any person knowingly enter into the test analyzer system any
12 false information about the vehicle being tested). Respondent Eacobacci certified 44 vehicles
13 between the dates of July 1, 1999, and July 16, 1999, by entering false vehicle license plate
14 numbers into the Test Analyzer System. Respondent Eacobacci was required to attend an 8-hour
15 training course. Respondent Eacobacci complied with this citation on March 18, 2000.

16 c. On April 9, 2003, the Bureau issued Citation No. M03-1046 to Respondent Eacobacci
17 against his technician license for violations of Health and Safety Code section 44032, (qualified
18 technicians shall perform tests of emission control systems and devices in accordance with
19 section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation") section
20 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
21 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
22 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with the
23 ignition timing adjusted beyond the manufacturer's specifications. Respondent Eacobacci was
24 required to attend an 8-hour training course. Respondent complied with this citation on May 30,
25 2003.

26 d. On August 22, 2007, the Bureau issued Citation No. M08-0152 to Respondent
27 Eacobacci against his technician license for violations of Health and Safety Code section 44032,
28 (qualified technicians shall perform tests of emission control systems and devices in accordance

1 with section 44012 of that Code) and California Code of Regulations, title 16, ("Regulation")
2 section 3340.30, subdivision (a) (qualified technicians shall inspect, test, and repair vehicles in
3 accordance with sections 44012 and 44035 of the Health and Safety Code, and Regulation section
4 3340.42). Respondent Eacobacci issued a certificate of compliance to a Bureau vehicle with a
5 missing pulse air injection system. Respondent Eacobacci was required to attend an 8-hour
6 training course. Respondent complied with this citation on October 10, 2007.

7 OTHER MATTERS

8 25. Pursuant to Code section 9884.7, subdivision (c), the Director may refuse to validate,
9 or may invalidate temporarily or permanently, the registrations for all places of business operated
10 in this state by Piotr Josef Baran upon a finding that he has, or is, engaged in a course of repeated
11 and willful violations of the laws and regulations pertaining to an automotive repair dealer.

12 26. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station License
13 Number RC 242996, issued to Piotr Josef Baran, doing business as P & S 76, is revoked or
14 suspended, any additional license issued under this chapter in the name of said licensee may be
15 likewise revoked or suspended by the director.

16 27. Pursuant to Health & Safety Code section 44072.8, if Basic Emission Specialist
17 Technician License Number EB 001259, issued to Robert Paul Eacobacci, is revoked or
18 suspended, any additional license issued under this chapter in the name of said licensee may be
19 likewise revoked or suspended by the director.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Director of Consumer Affairs issue a decision:

23 1. Revoking, suspending or placing on probation Automotive Repair Dealer Registration
24 Number ARD 242996, issued to Piotr Josef Baran, doing business as P & S 76;

25 2. Revoking, suspending or placing on probation any other automotive repair dealer
26 registration issued to Piotr Josef Baran;

27 3. Revoking or suspending Smog Check Station License Number RC 242996, issued to
28 Piotr Josef Baran, doing business as P & S 76;

1 4. Revoking or suspending any additional license issued under Chapter 5 of the Health
2 and Safety Code in the name of Piotr Josef Baran;


3 5. Revoking or suspending Basic Emission Specialist Technician License Number EB
4 001259, issued to Robert Paul Eacobacci;

5 6. Revoking or suspending any additional license issued under Chapter 5 of the Health
6 and Safety Code in the name of Robert Paul Eacobacci;

7 7. Ordering Piotr Josef Baran and Robert Paul Eacobacci to pay the Bureau of
8 Automotive Repair the reasonable costs of the investigation and enforcement of this case,
9 pursuant to Business and Professions Code section 125.3; and,

10 8. Taking such other and further action as deemed necessary and proper.
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13 DATED: June 18, 2010


JOHN WALLAUCH
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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